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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.4574 OF 1996

Chandrakant Rama Kale)
residing at & Post : Talwade)
Taluka Sawantwadi)
District : Sindhudurg.).. PETITIONER

VERSUS

1) The Deputy Engineer)
Zilla Parishad, Sub-Division)
Sawantwadi, Dist.: Sindhudurg.)
2) Zilla Parishad, Sindhudurg.)
3) Shri P.M. Bhuyar)
Presiding Officer)
Labour Court, Kolhapur.).. RESPONDENTS

Mr.N.M. Ganguli for the Petitioner.

Mr.A.S. Khandeparkar for Respondent No.1.

None present for Respondent No.2 though served.

Respondent No.3 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 19TH SEPTEMBER 2006

ORAL JUDGMENT :

. This Petition challenges the Award dated 27th February 1996 passed by the Labour Court, Kolhapur dismissing the Reference. The workman had challenged his termination from service by way of this Reference.

2. The Petitioner was employed as a Watchman with

the first Respondent from 15th December 1984. He was paid Rs.18/- per day as he was in service on a temporary basis. According to the Petitioner, he has worked with the first Respondent for more than 240 days in a year without any complaint from the first Respondent.

3. It appears that the Petitioner was arrested and charged for offences punishable under Sections 456 and 380 of the Indian Penal Code. The Criminal case was registered as No.110 of 1986. The Petitioner was arrested on 28th November 1986 and was first in police custody and then in judicial custody upto the date he was released on bail i.e. 10th December 1986.

4. The Petitioner reported for work in order to resume duty after he was released on bail. However, the first Respondent did not permit him to work. The Petitioner then raised an industrial dispute which came to be referred as Reference (IDA) No.38 of 1989. The contentions raised by the Petitioner in the Statement of Claim were, inter alia, that his services had been wrongfully terminated by the first Respondent; no charge-sheet was issued to him, nor was any inquiry held. He had also contended that if his termination from service is to be considered as a simple discharge, the provisions of Section 25-F of the Industrial Disputes Act, 1947 which are mandatory must be complied.

He has also pleaded that several persons were employed by Respondent No.1 after his termination from service.

5. In the Written Statement, the defence raised by the first Respondent is that the Petitioner had abandoned his service. According to the first Respondent, after the Petitioner was arrested, he did not report for duty at all and, therefore, it was presumed that he had abandoned his service.

6. After oral and documentary evidence was led by the Petitioner, the Labour Court by the impugned Award rejected the Reference. The first Respondent did not bother to lead any evidence at all. The Labour Court came to the conclusion that the Petitioner had admittedly worked continuously with the first Respondent for more than 240 days in a year. The Labour Court also came to the conclusion that the first Respondent had rightly treated the Petitioner as having abandoned his service since he has not withdrawn his wages which were deposited in his account for the period from 2nd October 1986 to 30th November 1986. It is observed by the Labour Court that there is no record as to whether the Petitioner had approached the first Respondent for work after being acquitted in the criminal proceedings.

7. There is no doubt that the Petitioner was

arrested on 30th November 1986 and charged of having committed the aforesaid offences. The Petitioner was released on bail only on 10th December 1986. The Petitioner was acquitted in the Criminal case on 18th July 1990 before which time the Petitioner had already obtained the Reference.

8. Mr.Ganguli appearing for the Petitioner has rightly pointed out that if the first Respondent had found the Petitioner absent from duty after 30th November 1986, it was necessary for them to issue a show cause notice or atleast a Memo calling upon the Petitioner to report for duty; not having done so, the action of the first Respondent in presuming this position is illegal. The learned Advocate also submits that if the termination of service of the Petitioner is to be treated as a simple discharge, he ought to have been paid or tendered notice wages and retrenchment compensation. This was not done by the first Respondent. Reliance is placed by the learned Advocate for the Petitioner on the judgment of the Division Bench of this Court in the case of *Gaurishankar Vishwakarma vs. Eagle Spring Industries Pvt. Ltd. & others, 1988 I CLR 38*, where the Division Bench has observed that in the case of abandonment of service, the employer must give to the workman a notice calling upon him to resume duty and must also hold an inquiry prior to terminating

the services. The employer cannot presume abandonment of services by the workmen. He also relies on the judgment in the case of *L.Robert D'Souza vs. The Executive Engineer, Southern Railway and another*, **1982 LAB.I.C. 811**, to submit that even when a temporary employee absents himself from work, it amounts to misconduct and any termination pursuant to this conduct of an employee must be preceded by a domestic inquiry.

9. On the other hand, it is submitted by the learned Advocate for the first Respondent that there is no date mentioned either in the Statement of Claim or in the Petition as to when the Petitioner reported for duty after being released on bail. It is submitted that the Petitioner reported for work only after the judgment in the Criminal case in 1990. In such circumstances, there is no question of reinstating the Petitioner.

10. The judgment of the Division Bench of this Court in *Vishwakarma* (supra) has not been considered by the Labour Court. The Division Bench, in this case, has clearly held that an employer cannot presume that an employee had abandoned his service. A memo or a notice must be issued by an employer calling upon the workman to report for duty and/or remain absent from duty. In the event the workman does not respond to this notice, the employer must hold an inquiry as absence without

leave constitutes a misconduct. Admittedly, the employer in this case did not give the Petitioner any notice or memo calling upon him to give an explanation for his absence without leave nor has the employer called upon the Petitioner to report for duty forthwith. The employer has also not held an inquiry as is required in view of the judgment of the Division Bench of this Court in *Vishwakarma* (supra). In such circumstances, the Labour Court has committed an error apparent on the face of record which must be rectified.

11. Furthermore, assuming that this is a case of a simple discharge, it was necessary for the first Respondent to issue a notice required under Section 25-F of the Industrial Disputes Act, 1947 and to pay compensation as if retrenched. The employer has not bother to follow this procedure. In my view, therefore, the order of the Labour Court must be set aside.

12. The Reference is remanded to the Labour Court, Kolhapur. The Labour Court will decide the issue afresh bearing in mind the aforesaid judgment and other judgments which may be cited by the parties before it. The Labour Court will also decide whether any wages are payable to the workman during this period. All contentions are kept open. The Labour Court to decide the matter within six months from the date of receipt of

the Writ of this Court.

13. Petition disposed off accordingly. No order as to costs.